

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DAIVD G.,

Claimant,

vs.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2010090999

DECISION

Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Alhambra, California, on June 2, 2011.

D.G. (Claimant) was represented by his parents.¹ Claimant was not present at the hearing.

Veronica Valenzuela, Supervisor, Inclusive Supports Unit, represented Eastern Los Angeles Regional Center (ELARC or Service Agency.)

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

ISSUE

Whether Service Agency proposed a proper fade-out plan for Claimant's discrete trial training.

¹ Initials have been used to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a twelve-year-old male with an autism diagnosis.
2. Service Agency funded 15 hours per week of discrete trial training (DTT) through Pacific Child & Family Associates (PCFA), since March 2005.
3. On September 8, 2010, the Service Agency served Claimant with a Notice of Proposed Action, seeking to terminate its funding of DTT. The stated reason for the decision was set forth as follows:

The Regional Center psychologist is recommending that a fade out plan be implemented however recommendations did not state the number of hours to be reduced for the authorization period of 11/1/10-1/31/2011. Additional recommendations made were a transition to behavior modification services or adaptive skills training. In the last progress report provided by the vendor, Pacific Child & Family Associates, the Regional Center was informed that “per an agreement with [Claimant’s parents], services provided by PCFA are scheduled to fade out beginning in February 2011.”

4. Claimant timely filed this appeal. Although the Fair Hearing Request stated that Claimant’s parents disagree with Service Agency’s decision to reduce DTT, they clarified their position at the outset of this hearing. Claimant’s parents agree that DTT services should be eventually terminated; they disagree with Service Agency’s proposed timeline.
5. Claimant’s most recent Individual Program Plan (IPP), dated November 10, 2010, noted that “[Claimant] currently receives DTT services at a rate of fifteen hours per week with [PCFA]. His service plan is currently focusing in the areas of receptive language skills, expressive language skills, self help, and behavioral intervention. His parents report that this service has assisted [Claimant] with progress in the areas of communication and behavior.” DTT is currently the only service that ELARC provides for Claimant.
6. Service Agency submitted an “Affidavit of Testimony” by Randi E. Bienstock, Psy.D. Dr. Bienstock recommended that Claimant’s DTT should fade out in the following manner: “Fading of DTT interventions should begin as of the next authorization period and should be reduced at the rate of 5 hours a week until services are faded out completely (this would mean a total of three authorization periods).” Service Agency further explained that from approximately October through December 2011, Claimant would receive DTT for 10 hours per week, and from January through March 2012, Claimant would receive DTT for 5 hours per week. Thereafter, Claimant would not receive any DTT.

7. Claimant's parents did not have the opportunity to cross-examine Dr. Bienstock; thus, her statement is given less weight than if she personally testified. Further, Dr. Bienstock never personally evaluated Claimant; rather she based her recommendations on record review. In addition, Dr. Bienstock's report is based entirely on outdated information; e.g., progress reports dating back to 2002, only two of which were from 2010, and none from 2011. Accordingly, Dr. Bienstock's recommendation regarding Claimant's DTT fade-out is given little weight.

8. Conversely, PCFA together with Claimant's parents, created a fade-out schedule for Claimant's DTT which considered his current needs. This plan is set forth in PCFA's progress report dated November 14, 2010, as follows:

Dates	Weekly Hours
February 2013 – April 2013	13 hours
May 2013 – July 2013	12 hours
August 2013 – October 2013	11 hours
November 2013 – January 2014	10 hours
February 2014 – April 2014	9 hours
May 2013 – July 2013	8 hours
August 2014 – October 2014	7 hours
November 2013 – January 2014	6 hours

DTT Services would cease on January 31, 2014.

9. PCFA had drafted other versions of a fade-out plan for Claimant. Service Agency contended that Claimant's parents agreed with other versions; however, the evidence showed that the plan listed in Factual Finding 7 is the only one agreed upon by Claimant's parents. The progress report preceding this proposed plan indicates Claimant's maladaptive behaviors which suggest the need for such a schedule. These behaviors were corroborated by Claimant's father's testimony.

10. PCFA Supervisor La Donna Halton and Associate Clinical Director Arpi Arabian testified at the hearing. Ms. Halton created a more recent fade-out plan, dated February 15, 2011, which proposed abruptly ending Claimant's DTT entirely in February 2012. The underlying report is almost identical to the November 14, 2010 report upon which the elongated fade-out plan was based; it is curious why PCFA proposed such a radical reduction in Claimant's plan. When questioned, Ms. Arabian offered that the plan modification was due to changes that occurred in Claimant's behavior between November 2010 and February 2011; however, the evidence does not support this proposition. The progress reports for these two dates are nearly identical (except for the recommended fade-out plan), and do not indicate major changes in Claimant's behaviors that would warrant a sudden end to DTT. On the contrary, the February 2011 report notes that Claimant had a recent increase in aggressive behaviors since January 2011. Further, Claimant's father testified that Claimant's behaviors during that time period did not improve. Claimant has

very limited expressive language and regularly tantrums. He engages in self-injurious behaviors. As he approaches adolescence, Claimant's violent outbursts are more difficult to control.

11. Service Agency presented evidence that Claimant may benefit from services such as adaptive skills training and behavioral intervention services. Service Agency proposed to introduce and increase these services as DTT is correspondingly phased-out.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal and reverse ELARC's decision to terminate Claimant's DTT according to the proposed fade-out plan by Dr. Bienstock, as set forth in Factual Finding numbers 1 through 11, and Legal Conclusion numbers 2 through 4, below.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act), incorporated under Welfare and Institutions Code section 4500 et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[t]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Applying those provisions here, Claimant's appeal must be granted. ELARC did not demonstrate that its decision to abruptly terminate DTT was supported by the evidence. As noted in Claimant's IPP, he has continuing needs with communication and behavioral issues, which his DTT program addresses. Alternative services proposed by the Service Agency may assist in meeting those needs, but the evidence did not show that they will supplant them. The evidence showed that PCFA, together with Claimant's parents, developed an appropriate fade-out plan based on Claimant's current needs. Accordingly, this plan should be followed, as stated above in Factual Finding 7.

ORDER

Claimant's appeal is granted. Eastern Los Angeles Regional Center's decision to terminate Claimant's DTT hours is reversed.

ELARC shall follow the fade-out plan as set forth in Factual Finding 7. In addition, ELARC should provide Claimant with appropriate supplemental services, such as adaptive skills training and behavioral intervention services, as the DTT is phased-out.

Dated: June 13, 2011

AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.